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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,921	11/01/2001	Adeyinka Adedeji	08CN06024-2	3493

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EXAMINER	
MULLIS, JEFFREY C	

ART UNIT	PAPER NUMBER
1711	

DATE MAILED: 01/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

. Offic Action Summary	Application No. 09/682,921	Applicant(s) ADEDEJI ET AL.	
	Examiner Jeffrey C. Mullis	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the corresp ndence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 August 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-46* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 6.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

Applicants are requested to change the docket number in paragraph 76 to an application number if possible.

Claims 42-46 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification as filed does not disclose a "reaction product" of the various materials recited in claims 42-46 and does not disclose how to make such a reaction product.

Claims 14, 26-29 and 31 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The term "naphthyl group including" renders at least claim 14 unclear in that it is not recited what the term "including" refers to.

Claims 26-29 are unclear since the ethylene/alphaolefin copolymer is embraced by the polyolefin of the independent claims and it is therefore unclear if the ethylene/alphaolefin copolymer is meant to be a material in addition to the polyolefin of the independent claim.

The term "substantially free" as recited in at least claim 31 renders at least claim 31 unclear since it is subjective as to how much substantially would embrace.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Maruyama et al. (USP 5,081,187).

Patentees broadly disclose applicants' components in applicants' amounts at column 8 lines 16-55 and at column 4 lines 60-64 discloses that part of the polyphenylene ether may be replaced with polyarylene ether. The amount of aromatic block recited by the instant claims is disclosed at column 5 lines 52-57. Note Example 1 which is identical to that of applicants' claims and contains a hydrogenated and non-hydrogenated block copolymer but does not disclose how much vinyl block is present in the block copolymers and does not disclose the presence of polyvinyl aromatic compound, although as set out above, these features are disclosed by patentees' specification.

Patentees do not disclose any specific examples containing applicants' materials in combination in applicants' amounts. However it would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to use applicants' amounts of materials based on the disclosure of Maruyama et al. since Maruyama et al. discloses that such materials in applicants' amounts may be used and in the expectation of adequate results absent any showing of surprising or unexpected results.

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ 2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-46 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-43 of copending application Serial No. 09/682,926. Although the conflicting claims are not identical, they are not patentably distinct from each other because choice

of percentages of the instant application from those of the co-pending application would have been obvious to a practitioner having ordinary skill in the art at the time of the invention in that the percentages overlap and furthermore in that it requires only routine experimentation to find the optimum or workable range of a result effective variable absent any showing of surprising or unexpected results.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-46 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of copending application Serial No. 09/682,923. Although the conflicting claims are not identical, they are not patentably distinct from each other because choice of percentages of the instant application from those of the co-pending application would have been obvious to a practitioner having ordinary skill in the art at the time of the invention in that the percentages overlap and furthermore in that it requires only routine experimentation to find the optimum or workable range of a result effective variable absent any showing of surprising or unexpected results.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication should be directed to Jeffrey Mullis at telephone number (703) 308-2820.

J. Mullis:cdc
January 12, 2003